REMARKS

Careful examination of the application is sincerely appreciated.

According to the Office Action, claims 1-9 are rejected under 35 USC 112, second paragraph. In response, without conceding any statements or waiving any arguments in the Office Action Applicant's claims are amended to more clearly define the invention and advance the prosecution of the application. Withdrawal of the rejection is requested.

Further according to the Office Action, claims 1-9 are rejected under 35 USC 103(a) as being obvious over US Patent 5,751,246 (hereinafter "Hertel") in view of US Patent 6,457,129 (hereinafter "O'Mahony").

In response, the rejections are respectfully traversed as lacking sufficient factual support and failing to establish a prima facie case of obviousness in accordance with the established cases and statutory law.

It is respectfully submitted that the examiner failed to establish a prima facie case of obviousness. The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if any one of the above-identified criteria is not met, then the cited references fail to render obvious the claimed invention and the claimed invention is thus distinguishable over the cited references.

Among other things, Hertel fails to teach or suggest Applicant's feature of "a third party interrogates the information unit for the position of the at least one data carrier," as recited in claim 1. The examiner alleges that Hertel discloses this feature at column 2, lines 55-56 and column 5, lines 38-54. Contrary to this allegation, Hertel merely teaches a control logic unit: there is absolutely no mention of a third party.

O'Mahony is not relied upon in the Office Action for the above feature as recited in claim 1. O'Mahony, therefore, fails to cure this deficiency in Hertel.

At least for the above reasons, Applicant submits that the rejection of claim 1 has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

Analysis of independent claim 3 is analogous to claim 1, as presented hereinabove. To avoid repetition, claim 3 will not be discussed in detail with the understanding that it is patentable at least for the same reasons as claim 1. Applicant, therefore, respectfully requests withdrawal of the rejection and allowance of claim 3.

Claims 2 and 4-9 depend from independent claims, which have been shown to be allowable over the prior art references. Accordingly, claims 2 and 4-9 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicants submit that the reason for the rejection of claims 2 and 4-9 has been overcome and respectfully

requests withdrawal of the rejection and allowance of the claims.

An earnest effort has been made to be fully responsive to the examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

February 19, 2007

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